

Attorney Docket: 081468-0352017
Client Reference: P-1755.010-US



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of:

Confirmation Number: 2816

FRITS JURGEN VAN HOUT, et al.

Application No.: 10/582,247

Group Art Unit: 2857

Filed: June 12, 2007

Examiner: RAYMOND, EDWARD

Title: SENSOR FOR LITHOGRAPHIC APPARATUS AND METHOD OF OBTAINING MEASUREMENTS OF LITHOGRAPHIC APPARATUS

July 25, 2008

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Office Action, dated June 27, 2008, Applicant hereby elects Group I, corresponding to claims 1-11 and 25-34, for prosecution in the application identified above. This election is made with traverse.

In connection with the Restriction Requirement, the Office asserts that the "the inventions listed as Group I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the inventions are process and apparatus claims which are distinct inventions." Applicant respectfully disagrees with this determination. MPEP 1850 states:

"The method for determining unity of invention under **PCT Rule 13** shall be construed as **permitting**, in particular, the inclusion of any one of the following combinations of claims of different categories in the same international application:

(A) In addition to an independent claim for a given product, an independent claim for a process specially adapted for the manufacture of the said product, and an independent claim for a use of the said product; or

(B) In addition to an independent claim for a given process, an independent claim for an apparatus or means specifically designed for carrying out the said process; or

(C) In addition to an independent claim for a given product, an independent claim for a process specially adapted for the manufacture of the said product and an independent claim for an apparatus or means specifically designed for carrying out the said process.” (Emphasis added).

Thus, it is not clear why the inventions of Group III and IV are not part of Group I.

Further, independent claims 1 and 12 of Group I and II, respectively, recite similar features. As such, Applicant respectfully submits that the inventions of Groups I and II form a single general inventive concept and that there is unity of invention between the inventions of Groups I and II.

In addition, Applicant respectfully submits that the search and examination required for any Group necessarily include the search and examination required for the remaining Group. Specifically, it is respectfully submitted that any search designed to identify documents relevant to the patentability of Group I will employ the same or similar search terms and techniques as Groups II, III and IV and, therefore, yields the same or similar documents as a search designed to identify documents related to Groups II, III and IV. Therefore, it is respectfully submitted that the subject matter of each Group is sufficiently related that a thorough search and examination of the entire application can be made without a serious burden and that the criteria for a proper requirement for election of species have not been met. MPEP § 803 clearly states that “[i]f the search and examination of the entire application can be made without serious burden, the examiner must examine it on its merits, even though it includes claims to distinct or independent inventions” (emphasis added). It is respectfully submitted that this policy should apply in the present application in order to avoid unnecessary delay and duplicative examination by the U.S. Patent and Trademark Office.

Accordingly, reconsideration and withdrawal of the Restriction Requirement are respectfully requested.

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Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

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